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IN THE

Supreme Court of the United States

October Term, 1962

No. 563

HONORABLE STEPHEN S. CHANDLER, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA,

Petitioner,

v.

OCCIDENTAL PETROLEUM CORPORATION,

Respondent.

RESPONDENT'S OBJECTIONS TO THE *"AMICI"* APPLICATION

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I

The application violates Rule 42 in all respects, including timing.

On April 20, 1962, the five lawyers who now (January 18, 1963) seek status as *amici* were all present (Bottomly being represented by Hewitt) and participated in the proceedings before the Court of Appeals, convened *en banc* at Judge Chandler's request (Tr. 2). They knew its decision and order made that very day. No one of them ever petitioned for certiorari.

Mr. Earl A. Brown, who now, nine months later, speaks for the group, was present at the Court of Appeals hearing on March 12-13 when Judge Chandler's counsel expressly conceded that that Court had the "supervisory powers" being exercised. Neither Mr. Brown nor anyone else dissented. (Tr. 159; our brief, pp. 11, 12.)

Judge Chandler's petition for certiorari was filed October 29, 1962. These lawyers do not and could not claim ignorance of it. The respondent's answering brief was filed December 18, 1962.

Not until January 24, 1963—*namely, eighty-seven days* after the filing of Judge Chandler's petition for certiorari —did respondent's counsel receive by mail from these lawyers notice of this motion and proposed brief. Their proof of service filed with the Clerk of this Court recites January 23 as the date of mailing.

Neither their notice nor their brief acknowledges that on January 18, 1963, respondent's counsel had refused a consent requested by telephone. (See our letter of that day to the Clerk of this Court; and the reasons assigned in II, *post*.)

Obviously the application violates Rule 42 in all respects. It was grossly not "timely presented". It does not disclose that consent was refused. It voices no reason to believe that the case had not been adequately presented in Judge Chandler's own brief months previously. Its substance and argument are mere repetitions of that brief. Many of the same authorities reappear. It exceeds five pages in length.

If Judge Chandler or his distinguished counsel in Washington and Oklahoma had become conscious of any inadequacy in his brief, they had had ample opportunity to supplement by a reply.

In short, this application is a much belated second afterthought for delay. The first was Judge Chandler's belated motion of January 3, 1963, to strike the respondent's brief filed sixteen days previously.

II

Respondent's reasons for refusing consent and for its present objection are, in addition to the foregoing, that the proposed brief makes no genuine contribution to the case.

Its predicates completely misstate and contradict the uncontroverted facts, the record and the findings of the Court of Appeals.

Whereas Judge Chandler's brief disregarded the uncontroverted facts and the record, the proposed brief misstates and contradicts them.

(1) The brief begins with this untrue predicate (p. 3):

> "There is no question here of an 'incapacitated' judge *or one so 'personally prejudiced' against Occidental as to be an ineffective jurist.*" (Italics ours.)

The words italicized flatly contradict the explicit uncontroverted record and the findings of the Court of Appeals.

The record teems with expressions of personal prejudice against Occidental and its president which, so far as we can discover, exceed in indecency, spite and defamation any instance of "prejudice", personal or otherwise, condemned by an appellate court. (Our brief, pp. 7-8, 14, 18-22.)

(2) Also flatly contradictory of the record is the further predicate (p. 4):

> "It should also be *emphasized* that *nothing irregular* was revealed in any of the transcripts, which conferences were all reported at the request of the judge." (Italics in the brief.)

The direct opposite are the facts. See the explicit and uncontroverted findings of irregularities made by the Court of Appeals. The secret in-chamber proceedings and all that transpired therein were *irregularities.*

Judge Chandler did not "request" the transcripts. On the contrary, he directed that transcriptions should not be delivered to Occidental; and he seized the stenotypes from the official reporter so that they could not be transcribed or produced by him pursuant to subpoena. (Our brief, pp. 12-14.)

In the April 10, 1962, hearing in the Court of Appeals, Mr. Irvine, counsel for Judge Chandler, conceded that what "was under discussion" in these in-chamber proceedings "went to the very heart of the plan of reorganization", and "affected the rights not only of Occidental, but every creditor and every other person concerned" (Tr. 55).

(3) A third predicate, flatly contradicted by the record, is the assertion that the respondent is making false, "scurrilous and scandalous" charges against Judge Chandler (p. 7).

Wherein? The only "scurrilous and scandalous" charges were by Judge Chandler himself; and the only efforts to withhold their disclosure by intimidating the official stenographer were by him. (Our brief, pp. 12-22.)

Occidental has merely presented correctly Judge Chandler's own uncontroverted words and conduct.

To quote the Court of Appeals (Hearing, April 10, p. 64):

> "The Court (Chief Judge Murrah): Well, the record here is that the Court exercised whatever control he did have over his reporter to prevent him from bringing them (the subpoenaed stenotype recordings) here.
>
> Mr. Crowe (counsel for Judge Chandler): Now, Mr. Chief Judge, I can tell you, as I said in the beginning, I regret that it happened; I really do, Your Honor, and I don't think it right."

(4) A fourth predicate, flatly contradicted by the record, is the assertion on page 3 of a

> "later expression of the Court and/or council, stating that the Writ 'does not cast any reflection upon your integrity or your devotion and dedication to the duties of a Federal Judge."

There never was such a statement by the Court of Appeals or the Judicial Council. Significantly, no page of the record is cited.

On the contrary, following the decision of April 20, 1962, the Court of Appeals, still sitting *en banc*, *unanimously* denied on June 1, 1962, Judge Chandler's petition "for a rehearing" (R. p. 21); denied on June 6 "the petition for rehearing of John S. Bottomly and C. J. Hoffman" (R. p. 23); denied on June 13, Judge Chandler's "second petition for rehearing" (R. pp. 24, 25); denied on June 13 a motion by Earl A. Brown "for stay of execution" (R. p. 25); denied on June 13, "a document filed by V. P. Crowe, attorney for respondent (Judge Chandler) requesting the

court to reconsider respondent's petition for rehearing" (R. p. 25); and denied on June 25, Judge Chandler's motion "for specific findings of fact and conclusions of law" (R. p. 27).

(5) A fifth predicate flatly contradicted by the record is this (p. 5):

> "The original Petition for Disqualification having been *abandoned* by the fiilng of the 'Amended Application', the said Amended Petition was not adequate to confer jurisdiction on the Court of Appeals to grant the Petition." (Italics ours.)

So far from being "abandoned", the "original petition" remained an acknowledged and accepted part of the record before the Court of Appeals. To quote that Court (24a):

> "We have heard the matter on the petition, the amended petition, the response, the evidence adduced at three days of hearing, the briefs, and the oral argument."

The so-called amended petition was itself entitled "petition for leave to amend and supplement petition for writ of mandamus and/or prohibition". It also asked "leave to renew and enlarge the prayer for relief set forth" in the original petition (R. p. 5).

(6) On page 4 the proposed brief claims that, at the close of the Court of Appeals hearing on April 10, Mr. Windle, counsel for the Securities and Exchange Commission, spoke against disqualification.

Candor, we submit, would have required an acknowledgment that Mr. Windle confessed that, except for the

in-chamber progeedings on January 30, he and the Commission "were not advised of these (in-chamber) meetings", and "didn't know about them" (Tr. pp. 78, 87).

Candor would also have been fulfilled by acknowledging the following (Hearing, April 10, p. 75):

> "The Court (Judge Breitenstein): Does the S.E.C. approve his (Judge Chandler's) action of withholding transcripts from the Court?
>
> Mr. Windle: No, your Honor, I do not; the Securities and Exchange Commission does not. I think that that was inexcusable."

(7) Also on page 4 the proposed brief slurs Occidental as a stockholder.

The true and full facts were stated by the Court of Appeals in *Occidental* v. *Walker*, 289 F. 2d 1 (Feb. 7, 1961).

Respectfully submitted,

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